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8 UNITED STATES DISTRICT COURT
9 MIDDLE DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 ANTHONY PHILLS, Case No.: Number
12 vs. Plaintiff,
13 GIA FEY, COMPLAINT
14 Defendant

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16 PLAINTIFF ANTHONY PHILLS, (hereinafter “PLAINTIFF”), files this Complaint against the
17 DEFENDANT GIA FEY (hereinafter “DEFENDANT”), seeking an accounting and compensatory
18 damages for breach of contract, in quantum merit, and statutory or other damage for copyright
19 infringement, as well as punitive damages and attorneys fees and costs, and such other relief as
20 grounds therefor allege, as follows:

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22

23 INTRODUCTION

24 1. PLAINTIFF is an individual and graphic designer who designed a logo concept at the
25 request of DEFENDANT. That design concept is the subject of Copyright Registration
26 No. VA0002207406 (“the Image”), issued on or around May 27, 2020.

1 2. Attached hereto and incorporated by this reference as Exhibit A is a true and correct copy
2 of PLAINTIFF's designs the subject of the Registration.
3
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5 **JURISDICTIONAL ALLEGATIONS**
6

7 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332, 1337, and 1338,
8 as the central fact giving rise to this dispute is a verbal contract entered within the state and
9 county, and the violation of PLAINTIFF's exclusive entitlement to create copies and
10 derivatives of copyrights, a field preemptive by federal law, and as the DEFENDANT
11 operated within the Court's jurisdiction during all pertinent times;
12
13 5. DEFENDANT GIA FEY is now, and to the extent known, at all time mentioned in
14 this complaint was a resident of Los Angeles, California, and subject to this court's personal
15 jurisdiction.
16
17 6. Venue is proper in this Court because the DEFENDANT operated business within the
18 Court's jurisdiction, and the objectionable conduct occurred in the venue where the court is
19 located.
20

21 **COUNT I**
22 **BREACH OF CONTRACT**
23

24 7. PLAINTIFF adopts and re-alleges paragraphs 1 through 6 as if fully set forth and
25 incorporated herein.
26
27 8. On or about February 11, 2013, PLAINTIFF and DEFENDANT agreed that PLAINTIFF
28 would develop a brand name and design a logo for DEFENDANT's use, in exchange
for a royalty on their use at the rate of 10% of any and all revenue derived from the sale
of goods, marketed with or bearing the logo design. Plaintiff attempted memorialization of
COMPLAINT - 2

1 that agreement, setting forth the terms referenced herein, in attachment to an email dated July
2 27, 2013.

3 9. PLAINTIFF did proceed to develop the trade name BODY BY GIA and to design a logo
4 for DEFENDANT's business, formally organized as BODY BY GIA LLC. Attached hereto
5 and incorporated by this reference as EXHIBIT A is a true and correct copy of underlying
6 deposit materials submitted for copyright registration No. VA0002207406. PLAINTIFF is
7 the sole and exclusive owner of all copyright interest in the Image, in all iterations.

8 10. In or around January 21, 2013, independent of PLAINTIFF's knowledge or consent,
9 DEFENDANT had designed a derivative of the logo (the "Image") which derivative, here
10 presented,



11 12 13 14 was utilized to advertise goods and services, and caused to be a source of, and trademark used
15 in connection with the distribution of goods.

16 17 18 19 20 The logo became the thematic and core image of DEFENDANT's social media
21 campaigns, website, training videos, blogs, and merchandise through 2020, and continues in
22 use.

23 11. Plaintiff has never sought approval of the derivatives, has never provided Plaintiff with
24 attribution in association with any of her usages, never provided any kept documentation of
25 use for Plaintiff, provided no accounting to Plaintiff, never tendered payment to Plaintiff, and
26 has never provided Plaintiff with access to books and records, reflective of use of the Image.

27 //
28 //

COUNT II
PROMISSORY ESTOPPEL

12. PLAINTIFF adopts and re-alleges paragraphs 1 through 8 as if fully set forth and incorporated herein.

13. PLAINTIFF refrained from charging DEFENDANT an hourly or flat fee for preparation and delivery of the Image, based upon DEFENDANT's promise to pay a royalty.

14. The agreed rate of royalty of 10% is within the scope of what is customary and ordinary in the industry in support of a entrepreneur who has limited cash, given PLAINTIFF's skill and acclaim, and the risk that if the business was not successfully, payment would not be made.

15. PLAINTIFF fully and reasonably relied on DEFENDANT's promise that if and when she became successfully, she would honor the agreement and pay the royalty.

16. PLAINTIFF, in or around spring or 2020, discovered that his detrimental reliance by deferring receipt of compensation resulted in DEFENDANT'S indebtedness, when PLAINTIFF saw the word trademark BODY BY GIA and the Image prominently appearing in major magazine and news outlets and articles, and for the sale of branded products, business fitness clothing and water.

17. Upon receipt of notice, DEFENDANT claimed she did not like PLAINTIFF's work, so instead developed the derivative, expiating her from responsibility to pay the royalty.

18. DEFENDANT enjoyed and continues to enjoy the benefit of the bargain that was made for years, while PLAINTIFF has enjoyed no compensatory benefit.

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COUNT III
INFRINGEMENT

19. PLAINTIFF adopts and re-alleges paragraphs 1 through 6 and 8 as if fully set forth and incorporated herein.

20. Defendant copied protected elements of Plaintiff's referenced artwork, and made derivatives thereof without authorization.

21. Plaintiff utilized the protected elements and/or derivatives in marketing and advertising of services, to brand a store selling fitness attire and subscriptions to videos, and in other-branding with a third party, to marketing water.

22. The infringing distribution of the Image adversely and negatively affected the market for the Image, in fact, entirely usurping its commercial value, precluding its use for a different customer or purpose, resulting in extensive economic damage to PLAINTIFF.

COUNT IV
INTENTIONAL INFRINGEMENT

23. PLAINTIFF adopts and re-alleges paragraphs 1 through 10, and 14 through 17, as if fully set forth and incorporated herein.

24. DEFENDANT received notice of infringement, and an opportunity to provide an accounting and pay the royalties, at least as early as February of 2021, when she acknowledged receipt of notice from the undersigned, that was first dispatched in November of 2020.

25. DEFENDANT'S unlawful uses of derivative content, was expressly admitted to be willful and deliberate, were intended to avoid and disregard the PLAINTIFF's ownership copyrights in the Image, and constitute intentional infringement.

26. After repeated demands, DEFENDANT removed the infringing content in substantial part, but has continued to advertise utilizing the Image, and has failed and refused to provide an accounting or to pay any royalties.

27. As a direct and proximate cause of Defendant's willful infringements, Plaintiff was damaged, and is entitled to an award of copyright damages.

COUNT IV
EQUITABLE RELIEF

28. PLAINTIFF adopts and re-alleges paragraphs 1 through 8, as if fully set forth and incorporated herein.

29. Upon receipt of Notice of Breach and Demand for an Accounting of sales and revenue, DEFENDANT refused to comply, and refused access to books, records, and other documentation reflecting of the royalty due.

30. PLAINTIFF seeks specific performance, to force the full and complete accounting of the revenue from BODY BY GIA goods and subscriptions, from which DEFENDANT is required to pay PLAINTIFF a royalty.

31. PLAINTIFF additionally continues using legacy videos to promote her business, heavily branded with Plaintiff's work and particularly fitness attire.

32. As DEFENDANT is fully capable of taking corrective actions, and PLAINTIFF has no means of impeding or curtailing the use, the Court's granting of an injunction, these remedies in equity are warranted.

PRAYER

WHEREFORE, PLAINTIFF respectfully requests that this Court grant judgment against DEFENDANT:

- 1 a. ordering DEFENDANT to provide an accounting of all revenue earned from the
- 2 sale and subscription to goods while utilizing the trade name and Image, whether directly
- 3 or through the entity entitled BODY BY GIA or BODY BY GIA LLC, from January
- 4 2013 to date;
- 5 b. for compensatory damages in an amount equal to ten percent (10%) all revenue
- 6 derived by DEFENDANT from date of first use of the BODY BY GIA trade name
- 7 and image as her trademark, to date;
- 8 c. for statutory damages for copyright violation in the amount of \$150,000;
- 9 d. for punitive damages for willful, deliberate, and intentional copyright infringement
- 10 in an amount equal to three times the amount of royalties due or statutory damages,
- 11 whichever is greater;
- 12 e. for recovery of PLAINTIFF's attorneys' fees, costs and expenses of this proceeding;
- 13 f. permanently enjoining continued use and distribution of the BODY BY GIA logo;
- 14 and

18 such other and further relief as the Court deems appropriate.

19 Dated this 12th day of October, 2022,

20 Respectfully,

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